**Douglas R. Wilbur, Inc. d/b/a DRW Electric and its alter egos Brookeside Electric, Inc. and Dynomax Electric Corp. *and* Local 252, International Brotherhood of Electrical Workers, AFL–CIO.** Cases 7–CA–52789 and 7–CA–53196

March 31, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that Respondents Douglas R. Wilbur, Inc. d/b/a DRW Electric (Respondent DRW), Brookeside Electric, Inc. (Respondent Brookeside), and Dynomax Electric Corp. (Respondent Dynomax), collectively the Respondents, have failed to file an answer to the consolidated amended complaint; that Respondent Brookeside withdrew its answers to the original complaint and the amended complaint; and that Respondent DRW failed to file an answer to the original complaint and the amended complaint. Upon charges and an amended charge filed by Local 252, International Brotherhood of Electrical Workers, AFL–CIO (the Union) on March 11, October 4, and November 18, 2010, the Acting General Counsel issued the complaint and amended complaint against Respondents DRW and Brookeside on June 23 and July 27, 2010, respectively; and a consolidated amended complaint against the Respondents collectively on December 29, 2010, alleging that they have violated Section 8(a)(5) and (1) of the Act. As indicated above, the Respondents failed to file an answer to the consolidated amended complaint, and Respondent DRW failed to file an answer to the original complaint and the amended complaint.[1] Respondent Brookeside filed answers to the original complaint and the amended complaint but subsequently withdrew those answers on January 11, 2011.

On February 2, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on February 3, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the original complaint, amended complaint, and consolidated amended complaint separately and affirmatively stated that unless an answer was received by July 7, 2010, August 10, 2010, and January 12, 2011, respectively, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaints are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by separate letters dated August 11, 2010, January 12, 2011, and January 20, 2011, notified the Respondents that unless an answer was received by August 18, 2010, January 19, 2011, and January 26, 2011, respectively, a motion for default judgment would be filed.[2]

Respondent Brookeside filed answers to the original complaint and amended complaint on July 7 and August 4, 2010, respectively, but subsequently withdrew those answers by letter dated January 11, 2011. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in both the complaint and the amended complaint must be considered to be true.[3] Accordingly, based on the withdrawal of Respondent Brookeside's answers to prior complaints and Respondent DRW's failure to file an answer to prior complaints, and in the absence of good cause being shown for the Respondents' failure to file an answer to the consolidated amended complaint, we deem the allegations to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

[1] Pursuant to a request by Respondent Dynomax, the Region granted Respondent Dynomax an extension of time until January 19, 2011, to file an answer to the consolidated amended complaint. However, Respondent Dynomax failed to file an answer. Further, by letter to the Region dated January 26, 2011, Respondent Brookeside indicated that it would not be filing an answer to the consolidated amended complaint and that it waives its right to do so.

[2] By email to the Region dated January 20, 2011, counsel for Respondent Dynomax stated, inter alia, that Respondent Dynomax did not intend to file an answer to the consolidated amended complaint; that it was not an alter ego of the other entities as alleged; that it was officially dissolved as a corporation on January 18, 2011; that it would not be continuing its business in the near or distant future; and that it did not make a profit in its less than 6-month existence. It is well established that a respondent's dissolution and asserted lack of financial resources does not excuse it from filing an answer to a complaint. See *OK Toilet & Towel Supply, Inc.*, 339 NLRB 1100, 1100–1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 15–16 (2000).

[3] See *Maislin Transport*, 274 NLRB 529 (1985).

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, Respondent DRW, a Michigan corporation, with an office and place of business at 8777 Main Street, Whitmore Lake, Michigan, has been engaged as an electrical contractor in the construction industry providing residential, inside wiring, and inside sound and communications electrical work.

At all material times, Respondent Brookeside, a Michigan corporation, with an office and place of business at 9551 Main Street, Whitmore Lake, Michigan, has been engaged as an electrical contractor in the construction industry providing residential, inside wiring, and inside sound and communications electrical work.

At all material times, Respondent Dynomax, a Michigan corporation, with an office and place of business at 1350 North Main Street, Ann Arbor, Michigan, has been engaged as an electrical contractor in the construction industry providing residential, inside wiring, and inside sound and communications electrical work.

At all material times, Respondent DRW, Respondent Brookeside, and Respondent Dynomax have had substantially identical ownership, management, business purposes, operations, customers, and supervision.

About October 21, 2009, Respondent Brookeside was established by Respondent DRW as a disguised continuation of Respondent DRW.

About July 29, 2010, Respondent Dynomax was established by Respondent DRW as a disguised continuation of Respondent DRW and Respondent Brookeside.

Based on the operations and conduct described above, Respondent DRW, Respondent Brookeside, and Respondent Dynomax are, and have been at all material times, alter egos within the meaning of the Act.

During calendar year 2009, a representative period, Respondents DRW and Brookeside, in conducting their business operations described above, collectively purchased and received at their Michigan jobsites goods and materials valued in excess of $50,000 from other enterprises, including Wyandotte Electric Supply and Clean Lites Recycling, Inc., located within the State of Michigan, each of which other enterprises had received these goods and materials directly from points outside the State of Michigan.

During calendar year 2010, a representative period, the Respondents, in conducting their business operations described above, collectively purchased and received at their Michigan jobsites goods and materials valued in excess of $50,000 from other enterprises, including Wyandotte Electric Supply and Clean Lites Recycling, Inc., located within the State of Michigan, each of which other enterprises had received these goods and materials directly from points outside the State of Michigan.

We find that each of the Respondents is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the following positions and have been supervisors of the Respondents within the meaning of Section 2(11) of the Act and agents of the Respondents within the meaning of Section 2(13) of the Act:

> Douglas Wilbur - President of Respondents DRW and Brookeside
>
> Connie Cushing - Chief Operating Officer of Respondent Dynomax

At all material times, the following individual has held the following position and has been an agent of the Respondents within the meaning of Section 2(13) of the Act:

> Laurie Jean Bratton - Office Manager of Respondents Brookeside and Dynomax

The following employees of the Respondents (collectively the units) constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> (a) All employees performing inside wireman electrical work within the jurisdiction of the Union, as defined in the Inside Wireman Agreement described below, as well as all other work normally and traditionally assigned to and performed by employees represented by the Union (the inside wireman unit).
>
> (b) All employees performing residential wireman electrical work within the jurisdiction of the Union, as defined in the Residential Wireman Agreement described below, as well as all other work normally and traditionally assigned to and performed by employees represented by the Union (the residential wireman unit).
>
> (c) All employees performing inside sound and communications electrical work within the jurisdiction of the Union, as defined in the Inside Sound and Communications Agreement described below, as well as all other work normally and traditionally assigned to and performed by employees represented by the Union (the inside sound unit).

The South Central Division Michigan Chapter of the National Electrical Contractors Association (NECA) has been an organization composed of employers in the construction industry, and exists for the purpose, inter alia, of representing its employer members in negotiating and administering collective-bargaining agreements.

On about the dates listed below, Respondent DRW entered into three letters of assent, wherein Respondent DRW agreed to be bound by all of the terms and conditions set forth in the respective collective-bargaining agreements between the Union and NECA as described above, and agreed to be bound to such future agreements unless timely notice was given:

(1) Inside Wireman Agreement - September 20, 2001

(2) Residential Wireman Agreement - September 20, 2001

(3) Inside Sound and Communications Agreement - March 11, 2002

None of the Respondents has given notice to terminate any of the letters of assent described above.

Respondent DRW, an employer in the building and construction industry as described above, granted recognition to the Union as the limited exclusive collective-bargaining representative of the units without regard to whether the Union's status had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been established in successive collective-bargaining agreements, the most recent of which are effective for the periods set forth below:

(1) Inside Wireman Agreement - June 1, 2007 to May 31, 2009, extended to May 31, 2010, succeeded by a new agreement, binding but as yet unsigned, covering the period June 1, 2010 to May 31, 2012

(2) Residential Wireman Agreement - June 1, 2008 to May 31, 2010, succeeded by a new agreement, binding but as yet unsigned, covering the period June 1, 2010 to May 31, 2012

(3) Inside Sound and Communications Agreement - June 1, 2008 to May 31, 2010, succeeded by a new agreement, binding but as yet unsigned, covering the period June 1, 2010 to May 31, 2012

At all material times since September 20, 2001, with respect to the inside wireman and residential units, and since March 11, 2002, with respect to the inside sound unit, the Union has been the limited exclusive collective-bargaining representative of the unit employees, based on Section 8(f) of the Act.

Since about October 21, 2009, the Respondents have failed to continue in effect the terms and conditions of employment of the units, contained in the collective-bargaining agreements described above.

The subjects referred to in the preceding paragraph relate to wages, hours, and other terms and conditions of employment of the units and are mandatory subjects for the purposes of collective bargaining, and the Respondents engaged in the conduct described in the preceding paragraph without the Union's consent.

About February 5, 2010, and again on November 4, 2010, the Union, by letters, requested the Respondents to bargain with the Union as the limited exclusive collective-bargaining representative of the units.

Since about February 5, 2010, the Respondents have refused to recognize and bargain with the Union as the limited exclusive collective-bargaining representative of the units.

## CONCLUSION OF LAW

By the conduct described above, the Respondents have been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of their employees, in violation of Section 8(a)(5) and (1) of the Act, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(5) by failing to continue in effect the terms and conditions of employment of the units as contained in the Inside Wireman Agreement, the Residential Wireman Agreement, and the Inside Sound and Communications Agreement, we shall order the Respondents to continue in effect the terms and conditions of employment of the unit employees as set forth in the Respondents' collective-bargaining agreements with the Union and to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondents' unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1171 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Further, having found that the Respondents violated Section 8(a)(5) by failing and refusing to recognize and bargain with the Union as the limited exclusive collective-bargaining representative of the unit employees, we

shall order them to cease and desist and to recognize and bargain in good faith with the Union.

In addition, the Respondents shall make the unit employees whole by making all fringe benefit payments that have not been made since October 21, 2009, and that would have been made but for the Respondents' unlawful failure to make them, including any additional amounts applicable to such delinquent payments as set forth in *Merryweather Optical Co.,* 240 NLRB 1213, 1216 (1979).[4] The Respondents shall also reimburse unit employees for any expenses ensuing from their failure to make the required payments to the fringe benefit funds, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

ORDER

The National Labor Relations Board orders that the Respondents, Douglas R. Wilbur, Inc. d/b/a DRW Electric, Brookeside Electric, Inc., and Dynomax Electric Corp., Whitmore Lake and Ann Arbor, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 252, International Brotherhood of Electrical Workers, AFL–CIO, as the limited exclusive collective-bargaining representative of the employees in the following appropriate units, by failing to continue in effect the terms and conditions of employment of the unit employees as set forth in the Respondents' Inside Wireman Agreement, Residential Wireman Agreement, and Inside Sound and Communications Agreement with the Union. The units are:

> (1) All employees performing inside wireman electrical work within the jurisdiction of the Union, as defined in the Inside Wireman Agreement described below, as well as all other work normally and traditionally assigned to and performed by employees represented by the Union (the inside wireman unit).
>
> (2) All employees performing residential wireman electrical work within the jurisdiction of the Union, as defined in the Residential Wireman Agreement described below, as well as all other work normally and traditionally assigned to and performed by employees represented by the Union (the residential wireman unit).
>
> (3) All employees performing inside sound and communications electrical work within the jurisdiction of the Union, as defined in the Inside Sound and Communications Agreement described below, as well as all other work normally and traditionally assigned to and performed by employees represented by the Union (the inside sound unit).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in effect the terms and conditions of employment of the unit employees as set forth in the Respondents' collective-bargaining agreements with the Union.

(b) Recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees.

(c) Make all contractually-required fringe benefit contributions to the various funds, if any, that have not been made since October 21, 2009, including any additional amounts applicable to such delinquent payments, with interest, in the manner set forth in the remedy section of this decision.

(d) Make the unit employees whole for any loss of earnings and other benefits, including the various fringe benefit contributions, if any, they may have suffered as a result of the Respondents' failure to bargain since October 21, 2009, with interest, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for

[4] To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondents' delinquent contributions during the period of delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owe the fund.

The consolidated amended complaint alleges, among other things, that: (1) the Respondents violated Sec. 8(a)(5) and (1) by failing to continue in effect the terms and conditions of employment contained in the parties' collective-bargaining agreements; and (2) those terms and conditions of employment "are mandatory subjects for the purposes of collective bargaining." The consolidated amended complaint also requests an affirmative remedy that includes restoration of fringe benefit contributions and payments to fringe benefit funds. By failing to file an answer to the complaint, the Respondents admitted those allegations. Accordingly, we have found that the Respondents violated the Act in that manner. We note, however, that the complaint did not specify the nature of the fringe benefit funds. Our Order, therefore, directs the Respondents to make employees whole with respect to those benefits, but does not foreclose the Respondents, at the compliance stage of this proceeding, from showing that some contractual fringe benefits are permissive subjects of bargaining and hence not covered by our Order. See, e.g., *Finger Lakes Plumbing & Heating Co*., 254 NLRB 1399, 1399 (1981).

good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at their facilities in Whitmore Lake and Ann Arbor, Michigan, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means.[6] Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since October 21, 2009.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. March 31, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[6] We have provided for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010). For the reasons stated in his dissenting opinion in *J. Picini Flooring*, Member Hayes would not require electronic distribution of the notice.

## APPENDIX
## NOTICE TO EMPLOYEES
## POSTED BY ORDER OF THE
## NATIONAL LABOR RELATIONS BOARD
## An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 252, International Brotherhood of Electrical Workers, AFL–CIO, as the limited exclusive collective-bargaining representative of the employees in the following appropriate units, by failing to continue in effect the terms and conditions of employment of the unit employees as set forth in our Inside Wireman Agreement, Residential Wireman Agreement, and Inside Sound and Communications Agreement with the Union. The units are:

(a) All employees performing inside wireman electrical work within the jurisdiction of the Union, as defined in the Inside Wireman Agreement, as well as all other work normally and traditionally assigned to and performed by employees represented by the Union (the inside wireman unit).

(b) All employees performing residential wireman electrical work within the jurisdiction of the Union, as defined in the Residential Wireman Agreement, as well as all other work normally and traditionally assigned to and performed by employees represented by the Union (the residential wireman unit).

(c) All employees performing inside sound and communications electrical work within the jurisdiction of the Union, as defined in the Inside Sound and Communications Agreement, as well as all other work normally and traditionally assigned to and performed by

employees represented by the Union (the inside sound unit).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in effect the terms and conditions of employment of the unit employees as set forth in our collective-bargaining agreements with the Union.

WE WILL recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees.

WE WILL make all contractually required fringe benefit contributions to the various funds, if any, that have not been made since October 21, 2009, including any additional amounts applicable to such delinquent payments, with interest.

WE WILL make the unit employees whole for any loss of earnings and other benefits, including the various fringe benefit contributions, if any, they may have suffered as a result of our failure to bargain since October 21, 2009, with interest.

DOUGLAS R. WILBUR, INC. D/B/A DRW ELECTRIC AND ITS ALTER EGOS BROOKESIDE ELECTRIC, INC. AND DYNOMAX ELECTRIC CORP.